

Claimant suffered accidental injury on March 23, 1994 while working for respondent as a janitor. At this time claimant injured his left arm and neck. He notified his supervisor and was referred for medical care. While under the treatment of Dr. Timothy Koehler, claimant was referred for a time to physical therapy. While undergoing physical therapy treatment claimant suffered additional injury to his low back. Claimant was released with restrictions, returned to work for respondent and terminated when respondent could no longer meet those restrictions. Claimant has been unable to find employment since leaving respondent.

In proceedings under the Worker Compensation Act the burden of proof is on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501(a) and K.S.A. 44-508(g).

Two physicians testified as to claimant's loss of task performing abilities. The Award discussed the opinions of Dr. Blake Veenis and Dr. Anthony Pollock. The Administrative Law Judge mentioned the opinions of Dr. Jacob Amrani, the treating physician, but rejected Dr. Amrani's opinions after indicating that these opinions did not cover claimant's entire work history. This finding is not supported by the record. Dr. Amrani was provided a detailed history of claimant's job tasks for the 15 years preceding the date of injury. The only omission involved two unreported jobs of approximately six months total duration which had relatively little significance. Dr. Amrani also had the opportunity to review Karen Terrill's task analysis report which, when considering the time weighted formula used by Ms. Terrill, gives a clear description of the tasks performed by claimant over the past 15 years and the time involved in the performance of these various tasks. The Appeals Board finds the Administrative Law Judge's rejection of Dr. Amrani's report is not appropriate under the circumstances.

K.S.A. 44-510e(a) reads as follows:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury."

As claimant has been unable to find employment since his termination of employment with respondent, the Appeals Board acknowledges claimant has a 100 percent loss in wages. In reviewing the evidence from Dr. Veenis, Dr. Pollock and Dr. Amrani the Appeals Board finds the opinion of Dr. Amrani, utilizing the time weighted task performance analysis from Karen Terrill, most clearly depicts claimant's loss of ability to perform these work tasks. As such, the Appeals Board finds claimant has suffered a 48 percent loss of ability to perform work tasks as a result of the injuries suffered with respondent.

K.S.A. 44-510e(a) requires that both claimant's loss of ability to perform work tasks and the wage differential be given equal weight when considering claimant's work disability. In averaging the 48 percent loss of ability to perform tasks with claimant's 100 percent loss of wages the Appeals Board finds claimant has suffered a 74 percent permanent partial general body work disability as a result of the injuries experienced while employed with respondent.

In all other regards the Award of the Administrative Law Judge is affirmed insofar as it is not in contradiction to the findings expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated December 20, 1995, should be, and is hereby, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Paul E. Magby, and against the respondent, Thrash Floor Maintenance, and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury sustained on March 23, 1994. Claimant is entitled to 37.68 weeks of temporary total disability compensation at the rate of \$213.34 per week or \$8,038.65, followed by 290.32 weeks permanent partial general body work disability at the rate of \$213.34 per week or \$61,936.87, based upon a 74% permanent partial disability, for a total award of \$69,975.52.

As of May 3, 1996, there is due and owing claimant 37.68 weeks of temporary total disability compensation at the rate of \$213.34 per week or \$8,038.65, followed by 72.61 weeks of permanent partial disability compensation at the rate of \$213.34 per week in the sum of \$15,490.62, for a total of \$23,529.27 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$46,446.25 is to be paid for 217.71 weeks at the rate of \$213.34 per week, until fully paid or further order of the Director.

Future medical will be considered upon proper application to and approval by the Director.

Claimant is entitled to outstanding unauthorized medical up to the statutory limit upon presentation of an itemized statement verifying same.

The fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Ireland Court Reporting	
Transcript of Regular Hearing	\$198.82
Kelley, York & Associates, Ltd.	
Deposition of Blake Veenis, M.D.	\$417.60
Deposition of Jerry Hardin	\$247.48
Deposition Services	
Deposition of Anthony Pollock, M.D.	\$220.70
Deposition of Jacob Amrani, M.D.	\$142.50
Transcript of continuation of Regular Hearing	\$220.80
Deposition of Karen Crist Terrill	\$262.80
Deposition of Timothy Thomas	\$128.00

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David Farris, Wichita, KS
Gregory D. Worth, Lenexa, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director